

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JAGROOP SANDHU,

Plaintiff,

v.

ENTERPRISE HOLDINGS, INC., *et al.*,

Defendants.

Case No. 3:20-cv-00685-ART-CLB

ORDER

Plaintiff Jagroop Sandhu, proceeding *pro se*, brings this action for race and national origin discrimination in violation of Title VII of the Civil Rights Act, 42 U.S.C. § 2000e-2(a), and NRS 613.330(1). Plaintiff, who is Sikh Indian-American, alleges that during his employment with Defendants, the business entities doing business as Enterprise Rent-A-Car, he received a lower rate of pay than other similarly situated employees which he was not able to negotiate and that he was passed up for a promotion which was awarded to a less-qualified Caucasian woman. Before the Court are: (1) Defendants' Motion for Summary Judgment (ECF No. 34); and (2) Defendants' Motion to Dismiss Based on Plaintiff's Untrue *In Forma Pauperis* Application (ECF No. 35). Because Plaintiff has not proffered sufficient evidence of discriminatory intent to create a genuine issue of material fact for trial, the Court grants Defendants' Motion for Summary Judgment and denies Defendants' Motion to Dismiss as moot.

I. COMPLAINT

Plaintiff filed his Complaint (ECF No. 6 ("Complaint")) on December 9, 2020, with an Application to Proceed *In Forma Pauperis* (ECF No. 1), and the Court screened Plaintiff's Complaint on January 26, 2021 (ECF No. 5). According to his Complaint, Plaintiff began his employment with Defendants on May 19, 2014, first as an Intern, then as a Management Trainee, and then was promoted to

1 Assistant Manager in May of 2016. (*Id.* at ¶¶ 14-20.) Plaintiff alleges that in
2 September of 2016, several months after his promotion, his Area Manager Joseph
3 Brandhagen “told Plaintiff that he was being paid too much and that his
4 commission would be reduced from 4.5% to 4%.” (*Id.* at ¶ 21.) When Plaintiff
5 complained about the reduced commission, Mr. Brandhagen told Plaintiff that a
6 promotion would become available in a month, and in October of 2016 Plaintiff
7 was promoted to Assistant Manager of the Mill Street Enterprise Rent-A-Car
8 location, the largest in the area. (*Id.* at ¶¶ 22-23.) A month later, Mr. Brandhagen
9 informed Plaintiff of a new compensation plan which allegedly resulted in a
10 reduction in Plaintiff’s compensation, and when Plaintiff complained to Group
11 Rental Manager Shane Jarrell, Mr. Jarrell refused to adjust Plaintiff’s
12 compensation plan. (*Id.* at ¶¶ 24-26.)

13 In March of 2017, Plaintiff was promoted again to Branch Manager, a
14 position in which his duties covered three Enterprise locations: (1) the Sparks
15 Enterprise; (2) the Fallon Enterprise; and (3) the Enterprise located in the Fallon
16 Naval Air Station (“NAS”). (*Id.* at ¶ 27.) In this position, Plaintiff allegedly earned
17 a commission based on approximately 65% of the revenue earned at the Sparks
18 Enterprise and 35% at both the Fallon Enterprise and the Falon NAS Enterprise,
19 alongside a base salary of \$47,500. (*Id.* at ¶ 28.) Plaintiff allegedly knew from his
20 time as an Intern at the Sparks Enterprise location that the former Branch
21 Manager of the three locations, Paul Freeman, earned commission based on
22 100% of the revenue earned at those three Enterprise locations. (*Id.* at ¶ 29.) He
23 also avers upon information and belief that other Branch Managers, a majority
24 of whom are Caucasian, earned commission based on 100% of the revenue at the
25 Enterprise locations they managed. (*Id.* at ¶ 30.) Plaintiff alleges that this
26 disparity was due to his race and national origin. (*Id.* at ¶ 31.)

27 Plaintiff alleges that in September 2018, he was passed up for a promotion
28 notwithstanding the fact that he won an award for Nevada Branch Manager of

1 the Year in August 2017. (*Id.* at ¶¶ 32-33.) The position was allegedly awarded to
2 Plaintiff's assistant, Cheryl Perryman, who is Caucasian, notwithstanding the
3 fact that Ms. Perryman was less qualified than Plaintiff. (*Id.* at ¶ 33.) Plaintiff
4 alleges that he was passed up for the promotion due to his race and national
5 origin. (*Id.* at ¶ 34.)

6 Plaintiff alleges that in September of 2018, he again attempted to discuss
7 his compensation plan with Mr. Brandhagen, but Mr. Brandhagen did not
8 respond for over a month. (*Id.* at ¶ 35.) Plaintiff states that he "gave his 'two weeks
9 notice'" to Enterprise on October 17, 2018, and that his employment was
10 terminated on that date. (*Id.* at ¶ 36.) Plaintiff brings four claims: one claim each
11 for race and national origin discrimination under Title VII of the Civil Rights Act
12 and NRS 613.330(1). Plaintiff attached his Nevada Equal Rights Commission
13 Charge of Discrimination and his Right to Sue Letter to his Complaint.

14 **II. MOTION FOR SUMMARY JUDGMENT**

15 Defendants brought a Motion for Summary Judgment on February 28,
16 2022. (ECF No. 34.) Defendants argue that Plaintiff has not met his burden to
17 establish a genuine issue of material fact as to whether Plaintiff's compensation,
18 the terms of his employment, and the denial of his promotion were motivated by
19 discrimination. First, Defendants argue that Plaintiff was not paid differently
20 than his similarly situated counterparts. Defendants explain that pay for
21 Assistant Managers and Branch Managers is based upon a target pay amount
22 that consists of a base salary and an estimated commission based on a
23 percentage of the branch's profits. (*Id.* at ¶ 8.) The commission percentages are
24 adjusted by Enterprise based upon the branch's previous 12-month revenue with
25 a fiscal year running from August 1 to July 31, and the base salaries are adjusted
26 each year for performance and cost of living. (*Id.*) Some Enterprise locations are
27 much more profitable, so the commission percentages at those locations may be
28 lower in order to meet a similar target pay as another Assistant or Branch

1 Manager at a less profitable location. (*Id.* at ¶ 11 n.20.)

2 In response to Plaintiff's allegation that Defendants reduced his
3 commission from 4.5% to 4% in September of 2016 while he was Assistant
4 Manager at the Downtown Reno Enterprise location, Defendants explain that
5 Plaintiff's first pay plan had a target pay of \$50,035 using a base salary of
6 \$33,700 and a 4.25% commission rate, and his second pay plan had a target pay
7 of \$52,112 using base pay of \$34,700 and a 4% commission rate. (*Id.* at ¶¶ 9-
8 10.) In other words, while his commission percentage rate may have been
9 reduced, his target pay was actually increased by Defendants. Defendants
10 support this explanation with a declaration from Caroline Johansen, the Human
11 Resources Manager for Enterprise, as well as copies of Plaintiff's pay plans from
12 May 1, 2016 to October 31, 2016 and from September 1, 2016 to February 28,
13 2016. (ECF No. 34-2 Exh. C.)

14 In response to Plaintiff's allegation that Enterprise reduced Plaintiff's
15 compensation in November of 2016 after Plaintiff was promoted to Assistant
16 Manager of the Mill Street Enterprise location, Defendants explain that Plaintiff's
17 new pay plan after he was promoted to the Mill Street location had a target pay
18 of \$54,361 using a base salary of \$34,700 and a 1.05% commission rate. (ECF
19 No. 34 at ¶ 11.) This is also supported by Ms. Johansen's declaration and a copy
20 of Plaintiff's pay plan. (ECF No. 34-2 Exh. C.)

21 Plaintiff contests this explanation by stating that he "did not agree with any
22 of these 'pay plans' and tried to negotiate in good faith but was never given an
23 opportunity [to] negotiate any pay plans during his tenure." (ECF No. 39 at 1.) He
24 states that his predecessors were able to negotiate their pay plans but that when
25 he was promoted, Susan Best, Plaintiff's "group controller," "decided to control
26 every aspect and made it more difficult for all of the Plaintiffs counterparts to
27 increase their pay through their own hard work" and "switched to pay plans
28 without negotiation and a 'take it leave it' attitude by the Defendant." (*Id.* at 5.)

1 Defendants provide evidence showing that Plaintiff was not paid less than
2 other employees with similar jobs. Defendants assert that it is simply not true,
3 as Plaintiff contends, that he was paid based on 65% and 35%, respectively, of
4 the revenue. Rather, he was paid a commission percentage based on 100% of the
5 revenue at the three locations. (ECF No. 34 at ¶ 23.) Defendants support this with
6 a copy of Plaintiff's pay plan for fiscal year 2016-17 as well as a declaration by
7 Joseph Brandhagen. (ECF No. 34-2 Exh. C, Exh. D at ¶ 7.) Defendants state that
8 Mr. Freeman's commission percentage at his departure was higher than Plaintiff's
9 because Mr. Freeman had been a Branch Manager for several years prior to 2017.
10 (ECF No. 34-2 Exh. D at ¶ 3.) Defendants further explain that Enterprise believed
11 that Mr. Freeman had become the recipient of a "runaway" pay plan, i.e. a plan
12 that was paying him too much for the size of the location he was running, and
13 that the change in positions was an opportunity for Enterprise to correct this pay
14 plan. (*Id.*) In response, Plaintiff states that "[i]t was the 'ideal time' for defendant
15 to adjust the pay of a location as soon as a non-white manager was promoted to
16 the location." (ECF No. 39 at 2.)

17 Defendants further argue that Plaintiff's target pay during his tenure as
18 Branch Manager was approximately equal or favorable when compared to other
19 Branch Managers who reported to Mr. Brandhagen. Defendants explain that
20 when Plaintiff was promoted to the Branch Manager position in March 2017, his
21 target pay was \$61,024. (ECF No. 34 at ¶ 12.) Defendants provide the following
22 anonymized information, supported by pay plan documents authenticated by the
23 declaration of Ms. Johansen, regarding other Branch Managers' pay plans for the
24 2016-17 fiscal year: TH (Caucasian) (\$56,011); EG (Caucasian) (\$56,098); KD
25 (African-American) (\$57,028); JB (Asian) (\$57,681); CG (Caucasian) (\$57,757);
26 MG (Caucasian) (\$58,806); and SB (Asian, Indian-American male) (\$62,586)
27 (promoted to Branch Manager November 1, 2017). (*Id.* at ¶¶ 14-15; ECF No. 34-
28 2 Exh. C). Plaintiff responds by stating that "[s]ome of these managers were out

1 of Las Vegas, NV which defendants decided had a higher cost of living then Reno,
 2 NV, hence not comparable[,]” and that “Employee [SB] is of South Indian descent
 3 and was treated differently than Plaintiff who is a Sikh Indian American. Proven
 4 by higher starting salary as a first time Branch Manager. This is another
 5 discriminatory action by Defendant, putting all Indian employees in one category,
 6 when they are two very different races in ideology and core values.” (ECF No. 39
 7 at 1.)

8 Defendants respond to the allegation that Plaintiff was not promoted to the
 9 RideShare Sales Executive position in September of 2018 by explaining that the
 10 comments for Ms. Perryman, who was hired, were more positive. One comment
 11 about Ms. Perryman was that “She had superior branch performance compared
 12 to the other three[,]” while Plaintiff had comments such as “Did not know FY
 13 performance, did not display strong research [or] understanding of how to
 14 prospect in this position, other candidate was more qualified.” (ECF No. 34 at ¶
 15 24.) Defendants further explain, supported by a declaration from Scott Savarda,
 16 that having more rental experience did not necessarily make someone better
 17 qualified for the RideShare position. (ECF No. 43 at 6; ECF No. 34-2 Exh. E at ¶¶
 18 2-3.) Plaintiff responds that “The all-white committee for hiring decided against
 19 hiring the Branch of the Year and instead hired the assistant of the Branch
 20 Manager of the year who then went on to lose the position because she could not
 21 perform well in the position the Plaintiff was more then qualified for.” (ECF No.
 22 39 at 3.) Defendants deny that Ms. Perryman lost the position due to performance
 23 and instead explain that she voluntarily left the position. (ECF No. 43 at 7 n.28.)

24 Finally, Defendants argue that Plaintiff was not constructively discharged
 25 when his employment with Defendants ended in October of 2018.¹

26 ¹ Plaintiff’s Complaint does not use the term “constructive discharge,” however, Plaintiff seeks the
 27 remedies of back and front pay which are consistent with constructive discharge, and Plaintiff
 28 argues in his response that he was constructively discharged. (Complaint at 9-10; ECF No. 39 at
 6.) Construing Plaintiff’s *pro se* Complaint liberally, the Court will consider Plaintiff’s Complaint
 as raising the issue of constructive discharge.

Plaintiff provides one photograph with his response which, he argues, shows racial animus. The exhibit is titled "Racist and Discriminatory Picture of Plaintiff's Supervisors (Joseph Brandhagen and Eric Whiteman) Putting Tampons Throughout Plaintiff's Vehicle." (ECF No. 39 at 10.) Taken from Plaintiff's point of view in the front passenger seat looking back, the photograph depicts two men, the driver and a passenger sitting behind the driver, wearing sunglasses and similar blue shirts, where the back passenger is holding a white cylindrical object consistent with the shape of a tampon and smiling. The back passenger has a handwritten label of "Joseph Brandhagen," and the driver, who can be seen smiling, has a label of "Eric Whiteman." Plaintiff cites this exhibit in his response when he explains that "Plaintiff took the action of leaving the toxic environment that the Defendant had surrounded him with. (see exhibit A)"

III. LEGAL STANDARD

"The purpose of summary judgment is to avoid unnecessary trials when there is no dispute as to the facts before the court." *Nw. Motorcycle Ass'n v. U.S. Dep't of Agric.*, 18 F.3d 1468, 1471 (9th Cir. 1994). Summary judgment is appropriate when the pleadings, the discovery and disclosure materials on file, and any affidavits "show there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). An issue is "genuine" if there is a sufficient evidentiary basis on which a reasonable fact-finder could find for the nonmoving party and a dispute is "material" if it could affect the outcome of the suit under the governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49 (1986). The court must view the facts in the light most favorable to the non-moving party and give it the benefit of all reasonable inferences to be drawn from those facts. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

The party seeking summary judgment bears the initial burden of informing the court of the basis for its motion and identifying those portions of the record

1 that demonstrate the absence of a genuine issue of material fact. *Celotex*, 477
 2 U.S. at 323. Once the moving party satisfies Rule 56’s requirements, the burden
 3 shifts to the non-moving party to “set forth specific facts showing that there is a
 4 genuine issue for trial.” *Anderson*, 477 U.S. at 256. The nonmoving party “may
 5 not rely on denials in the pleadings but must produce specific evidence, through
 6 affidavits or admissible discovery material, to show that the dispute exists,” *Bhan*
 7 *v. NME Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991), and “must do more
 8 than simply show that there is some metaphysical doubt as to the material facts.”
 9 *Orr v. Bank of Am.*, 285 F.3d 764, 783 (9th Cir. 2002) (quoting *Matsushita Elec.*
 10 *Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986)).

11 **IV. DISCUSSION**

12 To show a *prima facie* case of disparate treatment under Title VII of the
 13 Civil Rights Act and NRS 613.330(1)², a plaintiff must offer evidence that “give[s]
 14 rise to an inference of unlawful discrimination.” *Reynaga v. Roseburg Forest*
 15 *Products*, 847 F.3d 678, 690 (9th Cir. 2017). A plaintiff may establish an inference
 16 of discrimination either by satisfying the *prima facie* elements from *McDonnell*
 17 *Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973) or, in the alternative, by
 18 producing “direct or circumstantial evidence of discrimination demonstrating
 19 that a discriminatory reason ‘more likely than not motivated’ the employer.” *Id.*
 20 at 691 (citing *Metoyer v. Chassman*, 504 F.3d 919, 931 (9th Cir. 2007)); *see also*
 21 *McGinest v. GTE Service Corp.*, 360 F.3d 1103 (9th Cir. 2004).

22 Under the *McDonnell Douglas* framework, “a plaintiff alleging disparate
 23 treatment under Title VII must first establish a *prima facie* case of discrimination.
 24 Specifically, the plaintiff must show that: “(1) he belongs to a protected class; (2)
 25 he was qualified for the position; (3) he was subject to an adverse employment
 26 action; and (4) similarly situated individuals outside his protected class were

27 ² NRS 613.330 is almost identical to Title VII and courts apply the same analysis. *Stewart v. SBE*
 28 *Ent. Grp., LLC*, 239 F. Supp. 3d 1235, 1246 n.61 (D. Nev. 2017) (citing *Apeceche v. White Pine*
Cty., 96 Nev. 723, 615 P.2d 975, 977–78 (1980)).

1 treated more favorably.” *Chuang v. Univ. of Cal. Davis Bd. of Trustees*, 225 F.3d
 2 1115, 1123 (9th Cir.2000). When the plaintiff demonstrates their *prima facie*
 3 case, the burden shifts to the defendant to provide a legitimate, non-
 4 discriminatory reason for the adverse employment action. *Reynaga*, 847 F.3d at
 5 691. If the defendant meets this burden, then the plaintiff “must then raise a
 6 triable issue of material fact as to whether the defendant's proffered reasons are
 7 mere pretext for unlawful discrimination.” *Id.*

8 Plaintiff claims in his Complaint that “Defendants failed to promote Plaintiff
 9 and discriminated against Plaintiff with respect to his compensation, terms,
 10 conditions and/or privileges of employment because of Plaintiff's race [and
 11 national origin.]” (Complaint at ¶¶ 43-58.) The Court will consider three potential
 12 adverse employment actions: (1) Plaintiff's allegedly lower rate of compensation;
 13 (2) the allegedly discriminatory denial of Plaintiff's promotion; and (3) Plaintiff's
 14 alleged constructive discharge.

15 **A. COMPENSATION**

16 Plaintiff makes two claims regarding his compensation: (1) Defendants
 17 reduced Plaintiff's compensation on two occasions while he was Assistant
 18 Manager in 2016; (2) Defendants paid Plaintiff at a different rate than his
 19 predecessor Paul Freeman when Plaintiff was Branch Manager in 2017.
 20 Regarding the first claim, Defendants explain that while Plaintiff's commission
 21 rate may have been reduced, his target pay was actually increased during the
 22 changes in question, and Defendants proffer authenticated pay plan documents
 23 to support these claims. (ECF No. 34-2 Exh. C.) Plaintiff does not contest the
 24 authenticity of these documents or proffer competing evidence, instead
 25 responding that he “did not agree with any of these ‘pay plans’ and tried to
 26 negotiate in good faith but was never given an opportunity[, u]nlike his
 27 counterparts.” (ECF No. 39 at 1.) Plaintiff has not shown that he suffered an
 28

1 adverse employment action,³ so Plaintiff has not met his burden to establish a
2 prima facie case of discrimination regarding these incidents.

3 Regarding the second claim, Defendants first proffer evidence that Plaintiff
4 was not in fact paid on the basis of 65% and 35%, respectively, of the revenue at
5 the Sparks, Fallon, and Fallon NAS Enterprise locations. (ECF No. 34 at ¶ 23.)
6 Defendants explain the difference between Plaintiff's pay and Paul Freeman's pay
7 with two points: (1) Mr. Freeman had worked as a Branch Manager at that
8 location for several years prior to Plaintiff, which would explain his increased pay;
9 and (2) Enterprise was aware that Mr. Freeman had become the recipient of a
10 "runaway" pay plan and decided to correct the pay plan structure when Plaintiff
11 took the position. (ECF No. 34-2 Exh. D at ¶ 3; ECF No. 39 at 2.) Defendants also
12 proffer evidence of the target pay of seven other Branch Managers for the 2016-
13 17 fiscal year showing that Plaintiff's target pay was higher than six of the seven.
14 (ECF No. 34-2 Exh. C.)

15 Plaintiff does not contest the authenticity of Defendant's exhibits nor
16 proffer competing evidence. Regarding the other Branch Managers, Plaintiff
17 responds only by claiming, without evidence, that some Branch Managers were
18 operating in the Las Vegas region "which defendants decided had a higher cost of
19 living then Reno, NV, hence not comparable." (ECF No. 39 at 2.) However, as
20 Defendants point out, having a higher cost of living would reasonably lead to
21 higher compensation, therefore the fact that these individual were compensated
22 less than Plaintiff actually weakens Plaintiff's claim. (ECF No. 43 at 2-3.)
23 Regarding Mr. Freeman, Plaintiff responds only with conclusory statements that
24 the change in Plaintiff's pay was motivated by discrimination. Plaintiff has not
25 shown that he suffered an adverse action regarding his compensation, nor has
26 Plaintiff shown that similarly situated individuals outside of his protected class

27
28 ³ The issue of whether Plaintiff was denied the ability to negotiate the terms of his employment
will be considered under the issue of constructive discharge, *infra*.

1 were treated more favorably. *See Freyd v. Univ. of Oregon*, 990 F.3d 1211, 1229
2 (9th Cir. 2021) (affirming grant of summary judgment for the defendant based on
3 lack of disparate treatment regarding compensation).

4 **B. DENIAL OF PROMOTION**

5 Plaintiff claims that he was denied a promotion to the RideShare Sales
6 Executive position for discriminatory reasons, citing the fact that the position
7 went to an allegedly less-qualified Caucasian woman, Cheryl Perryman, and that
8 the hiring committee was “all-white[.]” (ECF No 39 at 3.) In response, Defendants
9 explain with the declaration from Scott Savarda, who was on the hiring
10 committee, that Ms. Perryman was similarly qualified to Plaintiff since “[t]he
11 RideShare position focused more on sales abilities than rental experience and a
12 Branch Manager would not necessarily be better suited for the position than an
13 Assistant Manager.” (ECF No. 34-2 Exh. E at ¶ 3.) Defendants also proffer the
14 interview notes which, among other comments critical of Plaintiff, stated “other
15 candidate was more qualified.” (ECF No. 34-2 Exh. E.)

16 While Plaintiff has met the initial burden of showing that he suffered an
17 adverse employment action that similarly situated individuals in his protected
18 class did not suffer, Defendants have articulated legitimate, non-discriminatory
19 reasons for their decision. Plaintiff has not proffered any evidence regarding this
20 claim or contested the authenticity of Defendants’ proffered evidence. Plaintiff’s
21 conclusory statements are insufficient to create a genuine issue of material fact
22 for trial. *Villalta v. City & Cnty. of San Francisco*, 448 F. App’x 697, 699 (9th Cir.
23 2011); *cf. Dominguez-Curry v. Nevada Transp. Dep’t*, 424 F.3d 1027, 1039 (9th
24 Cir. 2005) (reversing grant of summary judgment for the defendant in a failure-
25 to-promote discrimination case where there was evidence that agents of the
26 defendant had made comments exhibiting hostility toward women and a
27 preference for hiring a man for the position).

28 ///

1 **C. CONSTRUCTIVE DISCHARGE**

2 Plaintiff claims that he was constructively discharged when he left
3 Enterprise in October of 2018 because it was a “toxic environment[.]” (ECF No.
4 39 at 6.) The doctrine of constructive discharge works to convert an employee’s
5 nominally voluntary resignation into an involuntary termination for remedial
6 purposes when the employee resigns because working conditions became so
7 intolerable that a reasonable person in the employee’s position would have felt
8 compelled to resign. *Poland v. Chertoff*, 494 F.3d 1174, 1184 (9th Cir. 2007). The
9 bar for a claim of constructive discharge is “high.” *Id.* The Court will consider two
10 allegations relevant to Plaintiff’s claim of constructive discharge: (1) Defendants’
11 alleged refusal to negotiate with Plaintiff; and (2) the photograph which Plaintiff
12 alleges shows discriminatory animus toward Plaintiff.

13 On the first, Plaintiff has not proffered any evidence to show that
14 Defendants did in fact engage in negotiations with other similarly situated
15 employees, nor does Plaintiff describe any specific employees or managers who
16 allegedly engaged in such negotiations. On the second, the photograph proffered
17 by Plaintiff—the only substantive evidence proffered by Plaintiff in this case—
18 does not demonstrate a sufficiently intolerable work environment to allow
19 Plaintiff’s claim for constructive discharge to survive summary judgment. Even
20 assuming the authenticity of the photograph, the photograph does not clearly
21 depict Joseph Brandhagen and Eric Whiteman “putting tampons throughout
22 Plaintiff’s vehicle[.]” as Plaintiff alleges. (ECF No. 39 at 8.) Rather, it shows Mr.
23 Brandhagen (again assuming that Plaintiff’s identification of the individuals in
24 the car is correct) holding what appears to be a single tampon while smiling with
25 Mr. Whiteman and Plaintiff in the vehicle with him. As Defendants point out,
26 Plaintiff does not explain how this photo shows animus against Plaintiff for his
27 race or national origin. Even assuming, arguendo, that this photograph does
28 evinced some animus toward Plaintiff, a single instance of employment

1 discrimination is generally insufficient as a matter of law to support a finding of
2 constructive discharge. *Watson v. Nationwide Ins. Co.*, 823 F.2d 360, 361 (9th
3 Cir. 1987). The Court grants Defendants' motion for summary judgment on
4 Plaintiff's claims under Title VII and NRS 613.330(1).

5 **V. CONCLUSION**

6 Plaintiff has not carried his burden to establish a genuine issue of material
7 fact for trial on his discrimination claims. Fundamentally, Plaintiff's case suffers
8 from a lack of evidence proffered by Plaintiff in response to the summary
9 judgment motion. Plaintiff was advised by the Court on March 1, 2022, that
10 Plaintiff was required to set out specific facts in the form of admissible evidence
11 that contradict the facts shown in the defendant's declarations and documents.
12 (ECF No. 36.) Plaintiff submitted no affidavits, depositions, documents, or other
13 evidence beyond the single photograph. (The NERC Charge of Discrimination and
14 Right to Sue Letter are evidence that Plaintiff exhausted his administrative
15 remedies, but are not substantive evidence of discrimination.)

16 Because the Court grants Defendants' motion for summary judgment on
17 the issue of discrimination, the Court need not analyze whether Enterprise
18 Holdings, Inc. and EAN Holdings, LLC should be dismissed for lack of an
19 employment relationship with Plaintiff. The Court also need not consider whether
20 Plaintiff's state law claims should be dismissed as duplicative of the Title VII
21 claims. Furthermore, because the Court grants Defendants' motion for summary
22 judgment, the Court need not consider Defendants' Motion to Dismiss Based on
23 Plaintiff's Untrue *In Forma Pauperis* Application (ECF No. 35).

24 It is therefore ordered that Defendants' Motion for Summary Judgment
25 (ECF No. 34) is granted.

26 It is further ordered that Defendants' Motion to Dismiss Based on Plaintiff's
27 Untrue *In Forma Pauperis* Application (ECF No. 35) is denied as moot.

28 It is further ordered that this case be dismissed.

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3 DATED THIS 6th day of January 2023.
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7 ANNE R. TRAUM
8 UNITED STATES DISTRICT JUDGE
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